Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1872

WILLIAM WHITAKER,

Petitioner,

vs.

ROBERT BRUCE PIERCE, JOHN HILBORN, WILLIAM G. STRATTON, BIRGER DAHL, ROYAL SPEIDEL, AND W. EDGAR OUTLAW, JR.,

Respondents.

IN CHANCERY COMPLAINT FOR INJUNCTION RESCISSION AND REDRESS OF CIVIL RIGHTS.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

To: Honorable Warren E. Burger and the Justices of the Supreme Court of the United States:

William Whitaker petitions this Honorable Court to review the judgment and opinion of the Appellate Court of Illinois wherein it affirmed the denial of a temporary injunction requested to prevent termination of petitioner's employment by respondents solely for religious reasons.

OPINION BELOW.

The opinion of the Appellate Court is reported at 44 Ill. App. 3d 148 (official) and at 358 N. E. 2d 61 (unofficial). A copy

of the opinion rendered upon the judgment sought to be reviewed is appended hereto. (A18)

JURISDICTION.

The judgment of the Appellate Court was entered November 24, 1976. A petition for Leave to Appeal to the Supreme Court of Illinois, timely filed, was denied March 31, 1977. Petitioner invokes the jurisdiction of this Court pursuant to Title 28 United States Code Section 1257(3).

QUESTIONS PRESENTED.

Petitioner, William Whitaker, was employed as organist—choir director for 22 years without a written contract. When he experienced a religious conversion, respondents moved to obtain a resignation in writing. This requested resignation was held two months and then accepted, teminating petitioner's employment effective April 30, 1976. When petitioner sought to temporarily enjoin respondents, he was denied relief and on appeal, this denial was affirmed. The judgment and opinion of the Appellate Court raise the questions presented in this petition. The questions are:

1. Did the judgment and opinion of the Appellate Court effect denial to petitioner of the constitutional right to religious belief free from his church employer's interference?

2. Did the Appellate Court err in holding that petitioner's Constitutional Claim to Freedom of Religion was too insufficient to warrant issuance of a preliminary injunction to protect his church employment from termination?

3. Did the Appellate Court err in holding that petitioner's asserted claim to religious freedom at his employment free from his church employer's imminent termination lacked the requisite showing of great necessity and ultimate probable success on merits?

CONSTITUTIONAL PROVISIONS.

The United States Constitution provides (in pertinent part):

First Amendment:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Fourteenth Amendment:

> Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE.

William Whitaker had been employed as organist—choir director for 22 years without a written contract. In November of 1975, when he experienced a religious conversion, he immediately told his Methodist pastor, in confidence, that he wanted to remain at his employment but desired and intended to be confirmed an Anglican. Two weeks later, on December 3, petitioner was summoned by the respondents and, in the presence of his pastor, requested to resign his employment in *writing*. He was told that the resignation was a formality that would not be accepted. He gave the requested resignation December 4, and there was no further action for two months. In February of 1976 respondents obtained a vote to accept his resignation by telling the Administrative Board of the Church that Whitaker wanted to resign without being told of his wish to continue his employment. When Whitaker learned of this he emphasized

his desire to stay as organist-choir director and told respondents he wanted to rescind the letter; they refused and told him to leave the church April 30, 1976.

Whitaker filed a complaint for injunction, Rescission and Redress of civil rights. He moved for a temporary injunction. The church was made a party. Respondents denied that Whitaker had any grounds for equitable relief and moved to dismiss the complaint and to transfer the case to the court's Law Division. The trial court accepted the sufficiency of the complaint, but denied Whitaker temporary injunctive relief since it had no power to order the church to hold a hearing or to rehire Whitaker, and because respondents already had hired a new choir director. It made no order on respondent's motion to transfer.

An emergency petition to the Appellate Court and a motion to the State Supreme Court to expedite the appeal prior to April 30 both were denied. On November 24, 1976 the Appellate Court affirmed the denial of injunctive relief holding that Whitaker's complaint was not sufficient to obtain a preliminary injunction to protect his constitutional rights and that by reason of his resignation he probably would not succeed on the merits. The Supreme Court of Illinois declined to review this judgment and opinion.

RAISING OF FEDERAL QUESTION.

In the Trial Court Petitioner's complaint, Amendment thereto, and Motion for Temporary Injunction each raised the federal question that is the basis of the requested review. (A1, A5, A7)

Respondents filed a motion to dismiss the verified complaint and further, a motion to transfer this cause to the Law Division. (A6)

On hearing Plaintiff's motion, the trial court stated that it was not permitted to receive any evidence unless there was an answer on file and that it was required to proceed on the sworn complaint:

THE COURT: Counsel, you have given me a lot of details.

First of all, I want to apprise you of the law.

MR. MOENNING: I am coming to the law, Your Honor—

THE COURT: Wait a minute. You are not familiar with this proposition of law that I am not permitted to hear any evidence unless there is an answer on file that raises issues of fact. That is absolutely the law, and I can't hear any witness because there is no answer on file raising issues of fact. —Just a minute—The law is if there is no answer on file that raises issues of fact, then I must proceed on the basis of the sworn Complaint, and the sworn Complaint only. All of these facts that you have set forth in your argument are matters if there is an answer on file. I simply must take the Complaint, the sworn Complaint on its face, and see as to whether or not the Complaint as sworn gives you a right to an injunction.

Petitioner argued his federal rights:

THE COURT: Proceed on the law.

MR. MOENNING: The law of this state is that a contract for personal services without any period of time stated, a permanent contract to invoke services is no more than a contract at will, but that is not really the issue in this case. The issue in this case, as I said, does the plaintiff have a right to make his resignation rescinded. That is the first question. The second question, if you turn to the contract of will, the question is whether or not plaintiff is asking you to prescribe certain conditions to that contract of will, and the answer is an emphatic "yes". Those conditions, Your Honor, are set forth as a matter of public policy by the United States Supreme Court, and by the Illinois Court when they say that the religious conviction and the religious doctrine do apply to religious persons in this state, and that any contract of will cannot be read in derogation of the constitution.

Now, let's see what happens if we follow the defendant's argument. He says that he has a contract of will with Mr. Whitaker and he can force him out at any time for any reason whatsoever, correct? Now, if Mr. Whitaker

> is forced out on the facts of this case, he is forced out because— and only because he felt the religious dictates of his heart and his conscience to belong to the Anglican congregation.

and the duty of civil courts to protect such rights:

> MR. MOENNING: The Civil Courts have the power to direct any church to take any action—
> THE COURT: Counsel, we are spending a lot of time—
> MR. MOENNING: Your Honor—
> THE COURT: The motion for injunction is denied.

In the Appellate Court Petitioner sought emergency relief to protect the status and also moved the Supreme Court to expediate the appeal. Both motions urged the need to protect petitioner's employment and right to religious freedom at his employment. (A8, 11) Both motions were denied. (A11, 12) In his brief and reply brief petitioner extensively argued the federal right in order to show the abuse of the trial court's discretion in denying the injunction. (A13, 16) Respondents argued that petitioner's emphasis on constitutional liberty was an attempt to extend review *to matters not considered* or decided by the trial court when it denied the temporary injunction. (A15) The appellate court affirmed the trial court stating its cognizance "of other issues . . ., including his contention that he had a right not to have his employment terminated because of his religious conversion". (A18)

In the Supreme Court of Illinois Petitioner argued that the appellate court's judgment and opinion conflicted with decisions of this court and that at issue in the exercise of discretion was the principle of religious liberty to entertain any religious belief. (A23) The court denied leave to appeal. (A25) A stay of proceedings to present the questions raised to this court was obtained. (A25)

REASONS FOR GRANTING CERTIORARI.

The Decision of the Appellate Court Provides the Proper Opportunity for This Court to State the Private Employers Constitutional Duty to Respect His Employees Religious Beliefs.

Americans cherish religious liberty. The nation was founded and developed on the philosophy and principles that require society to leave each person alone in his religious beliefs. This Court has stated that the freedom to believe, in contrast to the freedom to act, is absolute. *Cantwell* v. *Connecticut,* 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900. The reasonableness of the belief itself is beyond judicial inquiry. *Barnett* v. *State Board of Education,* 47 F. Supp. 251, 253 (aff'd 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). Any inquiry, and any civil interference if at all, concerns the freedom to act on the belief and has nothing to do with entertaining the belief. The latter is a matter of conscience.

This Court also has developed principles to guide lower courts when requested to decide questions involving churches, church property, civil and property rights. The principles were initiated in *Watson* v. *Jones,* 13 Wall 679, 20 L. Ed. 666 (1871) and last reviewed in The Serbian Eastern Orthodox Diocese for the United States and *Canada* v. *Milivojevich,* 426 U. S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976). There, at page 2380, the Court said:

> "Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the state will become entagled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' *Presbyterian Church* v. *Hull Church,* 393 U. S. 440, 449, 89 S. Ct. 601, 606, 21 L. Ed. 2d 658 (1969)."

These cases hold what a civil court must not do. No decision of this court has given concrete content to or applied the "fraud, collusion or arbitrariness exception" first stated by dictum in *Watson. Id.*, 2382.

Recently the right to believe and the duty to accommodate that belief gave this court the occasion to define for private employers within the collective bargaining framework, the employers duty under Federal Statute to accommodate an employees religious belief. *TWA* v. *Hardison*, No. 75-1126 decided June 16, 1977, 45 LW 4672. Here, Petitioner urges the Court to review an employers duty to his employee under the first amendment when federal statutes do not apply. Succinctly, when an employee's religious freedom is not encompassed by federal statute such as here, does an employer under the first amendment have a duty to respect the employees right to believe. Here, since the civil trial court abdicated its duty to decide whether petitioner was going to be terminated solely because of his right to be confirmed in the Anglican faith, this case is the proper occasion to develop the Watson exception and the courts duty to protect first amendment rights in private employment. In this case there was no possible way in which the court could have become entangled in ecclesiastical matters. No church membership of particular belief was required to play the organ. After petitioner sought to be confirmed in the Anglican faith—nothing more than confessing his faith in a different protestant denominational church—his employer, a Methodist Church, was caused to terminate him and to hire a presbyterian. When it did this and when it failed to file a verified answer disputing the facts alleged, the trial court should have exercised its power and its duty to protect petitioners first amendment right to religious freedom. For this reason this is the proper opportunity for the Supreme Court to grant certiorari and petitioner requests the Court to do so.

The Appellate Courts Decision Abridges Religious Freedom Contrary to Important Decisions of This Court.

Although the facts of this case present the Court with the proper occasion to develope the Watson exception and the private employers duty to accommodate religious freedom apart from Federal statute, the Court may grant certiorari because the judgment and opinion of the Appellate Court are contrary to important decisions of this court protecting religious freedom. One such decision stands for numerous others in manifesting the importance of religious freedom in this Court. In *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943), the Court declared that to differ spiritually or intellectually as to things that do not matter much is a mere shadow of freedom. The test of substance is the right to differ as to things that touch the heart of the existing order. In this case, the appellate court in affirming the trial court has held that the trial court's discretion was not abused since petitioner is not likely to succeed on the merits and his claim of injury to religious freedom is conclusory. However, since the trial court abdicated its duty claiming it had no power to aid petitioner and refused to hear evidence, the holding of the appellate court tolls with finality petitioner's claim of injury to constitutional freedom. The invitation to return to the trial court in order to present facts previously refused in order to indicate that the resignation was "involuntarily coerced" casts a chilling pall over every working American's right to expect more than the mere shadow of freedom. Apparently the Appellate Court only finds significance to the First Amendment in divining fine distinctions between pleading coercion and "involuntary coercion." For the courts of the state who gave America Abraham Lincoln, this is indeed disappointing. This Court's rulings have all too often found such picayune sayings to be the hallmark of insidious discrimination and the threshold of denied freedom.

The Court should grant certiorari because the holding of the Appellate Court is final. If allowed to stand the decsions of

this Court respecting religious freedom will be undermined. Petitioner stated all he could say about his First Amendment right to believe in God as an Anglican. Respondent did not dispute these facts. This record is as final as it can be made between the parties. There is no issue of fact and no issue of law requires further findings. Certiorari should be granted.

Religious Liberty Should Be Accorded Proper Protection Whenever and Wherever Infringed.

Americans have died to live in Freedom. Indeed, many individuals in the past, and many in the future yet unknown, may be martyred for religious freedom. Today, polls show that America may be in the early stages of a religious revival. Personal religion particularly seems to be quickening. Journal of Current Social Issues, June 1977 (published by Board for Homeland Ministries of the United Church of Christ).

Freedom of religion itself enjoys the greatest respect among other constitutional freedoms. It is one that Americans take within them at every entry into social and economic interaction and intercourse. At work, it is no surprise that legislative, executive and judicial safeguards have been and are developed so Americans may continue to entertain religious beliefs outside the home and church and in the market place.

Petitioner believes that this court is cognizant of the chafing among rights—the foremost of which is religious freedom—that inevitably occurs in the private employment arena. Where so much employment is still at will, he believes a man should be free to join the faith of this choice without intrusion by his employer, terminating 22 years of service. In the lower courts petitioner showed the developing willingness of lower courts to carve out an area for every working American man and woman, long term or short term, wherein the employer may not intrude. (A11) Since the protection has been given and is founded upon this Court's early decisions limiting an employer's power to terminate employment for recognized discrimination,

petitioner urges the Court to review the emerging theory in the light of its prior decisions, current holdings with respect to statutory accommodation of religious freedom in the work place and the facts of this case. This case should be reviewed so each individual can be reassured that no employer may intrude upon his religious belief as he earns his living. The case may be reviewed so that no employee likewise may dictate in the name of religion unwarranted intrusions upon his employer.

Petitioner believes that the emerging theory in the lower courts is the proper vehicle for the court to protect his constitutional freedom to religious belief but also that of every American who enjoys this blessing. Finally it is the proper case and the proper occasion to judicially develop constitutionally required accommodation of religious freedom in the private employment arena.

CONCLUSION.

For the reasons stated herein petitioner prays that certiorari be granted to review the judgment and opinion of the appellate court and that the judgment of that court be reversed and remanded.

Respectfully submitted,

RICHARD C. MOENNING,
135 South LaSalle Street,
Chicago, Illinois 60603,
312-263-0062,
Lawyer for Petitioner.

APPENDIX

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department—Chancery Division

WILLIAM WHITAKER, *Plaintiff,* *vs.* ROBERT BRUCE PIERCE, JOHN HILBORN, WILLIAM G. STRATTON, BIRGER DAHL, ROYAL SPEIDEL, and W. EDGAR OUTLAW, JR., *Defendants.*	In Chancery Complaint for Injunction Rescission and Redress of Civil Rights.

VERIFIED COMPLAINT

* * * * *

Count IV

For his fourth cause of action plaintiff, against defendants Pierce, Hilborn and Stratton, states:

1-8. Plaintiff restates paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of Count IV. [Identifies parties and jurisdiction]

9. Plaintiff's exercise of religious conviction is an interest protected by the Illinois Constitution of 1970, Article I, Section 3, by the First Amendment to the United States Constitution (made applicable through the Fourteenth Amendment), and by federal statutes 42 U. S. C. 1981 and 1985(3).

10. Between November 15, 1975 and February 6, 1976, defendants Pierce, Hilborn and Stratton did wrongfully conspire for the purpose of depriving plaintiff of his interest, privilege and immunity to exercise, without injury to his employment, his

conscience and religious conviction to depart from membership in The Chicago Temple-First United Methodist Church in order to fulfill his private and personal conversion in faith leading him to be confirmed in the Anglican Communion on or about December 5, 1975.

11. The object of defendants conspiracy was to compel the "voluntary resignation" of plaintiff as organist-choir director at The Chicago Temple-First United Methodist Church, a position held by him since July 18, 1954.

12. To effect the object of such conspiracy, defendant Pierce, having received in confidence plaintiff's privileged communication of spiritual conversion, did wrongfully initiate, and without plaintiff's consent, did disclose such communication to defendants Hilborn and Stratton. From about November 21, 1975 to February 6, 1976, defendants, met together and planned to demand and obtain the "voluntary resignation" of plaintiff and move its acceptance by The Administrative Board of The Chicago Temple-First United Methodist Chuch.

13. To effect the object of the conspiracy defendant Hilborn did call a meeting of the Pastor-Parish Relations and Personnel Committee on December 3, 1975 and for the express purpose of intimidating plaintiff in the exercise of his religious freedom and demanding his resignation.

14. To effect the object of this conspiracy, defendant Stratton did wrongfully accept and bring to The Administrative Board of The ChicagoTemple-First United Methodist Church the "voluntary resignation" of plaintiff knowing such "voluntary resignation" was coerced and exacted from plaintiff against his free will.

15. As a result of defendants' conspiracy, plaintiff's "voluntary resignation" was obtained and upon presentation, accepted by The Administrative Board resulting in plaintiff's termination of employment as organist-choir director and thereby the deprivation of his civil and constitutional rights guaranteed him by the Illinois and United States Constitution to his damage.

16. In furtherance of such conspiracy, defendants Pierce, Hilborn and Stratton wrongfully refused to accept the rescission of plaintiff's resignation and to plaintiff's further damage falsely and maliciously communicated to the Congregation that plaintiff "has tendered his resignation from his office among us, effective April 30, 1976" and hired Dr. J. Albert Kindig (currently Director of Music of The First Presbyterian Church of Homewood, Illinois), to be choir director of The Chicago Temple-First United Methodist Church effective April 28, 1976.

WHEREFORE, plaintiff prays judgment against defendants

1. temporarily and permanently enjoining defendants from terminating plaintiff's employment as organist-choir director of The Chicago Temple-First United Methodist Church effective April 30, 1976 prior to such date, or thereafter without further order of the court;

2. temporarily and permanently enjoining defendants from (1) allowing Dr. J. Albert Kindig to proceed to exercise any duty or responsibility as choir director of The Chicago Temple-First United Methodist Church prior to April 30, 1976 or thereafter, and (2) paying or compensating Dr. J. Albert Kindig as choir director and (3) from hiring, using or accepting the services of any organist or other choir director with or without compensation without further order of court;

3. canceling, voiding and rescinding plaintiff's "voluntary resignation";

4. actual and punative damages in the sum of $750,000.00; and

5. such other and further relief as this court finds just in the premises.

Count V.

For the fifth cause of action against defendants Dahl, Speidel and Outlaw, plaintiff states:

1-16. Plaintiff restates paragraphs 1 through 16 of Count IV (sic) as paragraphs 1 through 16 of Count V.

17. Plaintiff's exercise of religious conviction is an interest protected by the Illinois Constitution of 1970, Article I, Section 3, by the First Amendment of the United States Constitution (made applicable through the Fourteenth Amendment) and by federal statutes 42 U. S. C. 1981, 1985(3) and 1986.

18. On or about November 15, 1976 and thereafter to and including the date of the filing of this complaint, defendants Dahl, Speidel and Outlaw obtained actual knowledge that defendants Pierce, Hilborn and Stratton did conspire, meet and purposely act to wrongfully terminate plaintiff's employment as organist-choir director of The Chicago Temple-First United Methodist Church in violation of plaintiff's constitutional right to exercise his religious conviction.

19. Between November 15, 1975 and the date of filing this complaint, defendants Dahl, Speidel and Outlaw had the power and duty to prevent jointly, severally and together with members of The Administrative Board of The Chicago Temple-First United Methodist Church had the power to aid in preventing the conspiracy of defendants Pierce, Hilborn and Stratton.

20. Defendants Dahl, Speidel and Outlaw knowing that defendats Pierce, Stratton and Hilborn did conspire, meet and act to wrongfully terminate plaintiff's employment breached their duty to plaintiff and did neglect, refuse and fail to prevent the wrongful termination of plaintiff's employment to plaintiff's damage.

21. As a direct and proximate result of defendants' breach of duty to plaintiff, plaintiff was and is damaged by the loss of employment, violation of his constitutional and civil rights to exercise his religious conviction and by the infliction of great emotional and mental stress and strain upon plaintiff.

WHEREFORE, plaintiff prays judgment against defendants:

1. for damages in the actual sum of $250,000.00,

2. for damages in the punative sum of $500,000.00, and

3. for such other and further relief as the court may find just and equitable in the premises.

AFFIDAVIT.

I, William Whitaker, first being duly sworn on oath state that I have read the foregoing complaint, I have actual knowledge of the facts therein and that the same are true.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS.

* * (Caption—76-CH-2245) * *

MOTION FOR TEMPORARY INJUNCTION

* * * * *

2. As more fully stated in his verified complaint plaintiff was forced in violation of his civil and constitutional rights protecting the free exercise of religious conviction to resign as organist-choir director effective April 30, 1976.

* * * * *

6. Plaintiff has petitioned defendants to meet with him for the purpose of seeking redress of his civil and constitutional rights. . . . Defendants, through counsel, refuse to meet with plaintiff.

7. The termination of plaintiff's employment on a resignation secured in violation of his constitutional right to the free exercise of religious conviction and the continuation of defendant's conduct to replace plaintiff as organist-choir director, . . . shall cause irreparable harm to plaintiff in that (1) Plaintiff cannot secure comparable employment and (2) The professional choir members will be disbanded as a group of singers that are necessary for plaintiff to fully and completely serve as organist-choir director of The Chicago Temple-First United Methodist Church. There is no prejudice to defendants by the entry of an order of this court temporarily enjoining the acts and wrongful conduct of which plaintiff complains.

* * * * *

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—76-CH-2245) * *

MOTION TO DISMISS VERIFIED COMPLAINT

* * * * *

3. The plaintiff's Complaint fails to state a cause of action upon which relief can be granted, because the defendants accepted plaintiff's voluntary resignation from his employment and in doing so did not in any way violate any of the plaintiff's civil or common law rights.

* * * * *

5. The plaintiff's Complaint fails to state a cause of action upon which relief can be granted under the Federal or Illinois Constitution or under the Federal Civil Rights Statutes, cited by the plaintiff in the Complaint as bases for his cause of action.

WHEREFORE, the defendants pray that the Verified Complaint be dismissed for the reasons cited above.

* * * * *

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—76-CH-2245) * *

RESPONSE TO MOTION FOR TEMPORARY INJUNCTION AND MOTION TO TRANSFER THIS CAUSE TO THE LAW DIVISION

* * * * *

1. The plaintiff's action is not properly before this Court, because the plaintiff has a complete remedy at law.

2. Plaintiff's motion for injunctive relief should not be granted by this Court, because such relief requires the specific performance of a contract for personal services.

3. The defendants will be prejudiced by the entry of a temporary injunction.

WHEREFORE, the defendants pray that the motion for a temporary injunction be denied and pray further that the defendants' motion to transfer this cause be granted by this Court.

* * * * *

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—-76-CH-2245) * *

AMENDMENT TO VERIFIED COMPLAINT

William Whitaker, plaintiff herein, by Richard C. Moenning, his attorney, upon leave of court granted April 22, 1976 to amend verified complaint to add The Chicago Temple-First United Methodist Church (hereinafter "Chicago Temple") as a party defendant, amends his verified complaint adding Count VI, and states:

* * * * *

3. Beginning on or about November 15, 1975 and continuing through the filing of plaintiff's verified complaint, defendant's employee Robert Bruce Pierce and officers John Hilborn and William G. Stratton, did, in violation of plaintiff's constitutional liberty to free exercise of religion, wrongfully meet and conspire to unduly influence plaintiff to resign his employment as organist-choir director by reason of his conversion to the anglican faith.

* * * * *

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—76-CH-2245) * *

ORDER APRIL 27, 1976

This cause coming on for hearing on motion of plaintiff for temporary injunction, the court having heard argument of counsel.

IT IS HEREBY ORDERED:

Plaintiff's motion for a temporary injunction is hereby denied.

ENTER:

/s/ SAMUEL B. EPSTEIN
Judge

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS.

* * (Caption—76-CH-2245) * *

EMERGENCY MOTION FOR ORDER TO PRESERVE STATUS QUO

* * * * *

4. Prior to the effective date of plaintiff-appellant's resignation . . . ' defendants-appellees plan to rehearse the choir using the services of a new choir director and organist at 6:15 p.m., Wednesday, April 28, 1976.

5. Plaintiff-appellant filed a motion for temporary injunction and on hearing, such motion was denied. Efforts to stay the effectiveness of that order or to otherwise obtain a preservation of the status quo before the trial court are impractical in view of the proximity to the April 28 rehearsal and the April 30 effective date of resignation. Further, the trial court has indicated its opposition to the entry of an order preserving the status quo.

* * * * *

7. Plaintiff-appellant seeks to preserve the status quo by an order of this court delaying the employment of the new organist and choir director, the rehearsal scheduled by him for Wednesday evening, April 28, 1976 at 6:15 p.m. and all other activities by the new organist and choir director *as premanent full-time employees of The Chicago Temple*. Plaintiff-appellant further seeks to suspend the effective date of his resignation . . . for 28 days, thereby permitting an informed decision of this court and the opportunity by defendants-appellees to voluntarily employ the services of plaintiff-appellant . . . for any musical activity at Chicago Temple on an *ad hoc* basis during the suspension.

8. Without the intervention of an order by this court, . . . plaintiff-appellant will be terminated before any effective decision can be made by this court on the merits of the appeal from the denial of the motion for temporary injunction filed by plaintiff-appellant.

* * * * *

WHEREFORE, pursuant to Rule 366 of the Rules of the Supreme Court, plaintiff-appellant prays this court to enter an order preserving the status quo pending determination of his appeal.

AFFIDAVIT

I, William Whitaker, first being duly sworn on oath state:

1. I am the plaintiff and plaintiff-appellant in the case entitled *William Whitaker* v. *Robert Bruce Pierce, et al.* filed in the Circuit Court of Cook County, County Department, Chancery Division. I make this affidavit in support of an emergency motion for order to preserve the status quo.

2. On November 15, 1975, I advised defendant Robert Bruce Pierce that I would undertake confirmation in the anglican faith and remove my membership from Chicago Temple. I advised defendant Pierce of my intent and desire to continue as

organist-choir director, a position I have held for nearly 22 years. I am 62 years of age this year.

3. On December 3, 1975, defendant Pierce had met with defendants Hilborn and Stratton to demand my resignation which through coercion, intimidation and undue influence, I submitted to defendant Stratton.

4. On February 6, 1976, I was advised that my "voluntary resignation" had been unanimously accepted by The Chicago Temple Administrative Board.

5. I subsequently sought to rescind my resignation in a letter to defendant Stratton, but defendant Hilborn wrote to me advising that the decision of the committee was final.

6. Subsequent to March 18, 1976, I attempted to meet with defendants and to resolve the differences giving rise to their conduct. My efforts through counsel were turned down.

7. As a part of my employment I have hired through Chicago Temple six professional choir members; these choir members' employment was terminated as a result of my "voluntary resignation" and hire of a new organist and choir director. Four of these choir members are without employment, and I am without employment effective April 30, 1976.

8. On April 28, 1976, at 6:15 p.m. defendants propose to rehearse the choir at Chicago Temple using the services of a new choir director and organist.

9. Throughout these proceedings from November 15, 1975 to the present, I have been denied every opportunity to present my case personally to The Chicago Temple Administrative Board or to give evidence on my behalf in support of a motion for temporary injunction.

10. This denial of a hearing and this termination of my employment is directly and blatantsly [sic] contrary to my constitutional right to select and exercise my religious conviction. My only "sin" has been to remove my membership from Chicago Temple and to be confirmed in the anglican faith.

Further affiant sayeth not.

MEMORANDUM ORDER

4-29-76 Motion Appellant, Pursuant to Supreme Court Rule No. 366, for the entry of an order preserving the status quo pending determination of this appeal.

DENIED

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—76-CH-2245) * *

MOTION TO EXPEDITE APPEAL TO THE SUPREME COURT

William Whitaker, plaintiff-appellant herein, by Richard C. Moenning, his attorney, respectfully moves this honorable court or any justice thereof to enter an order pursuant to Rule 302 of the Rules of the Supreme Court of Illinois that the instant appeal be taken directly to the Supreme Court and in support thereof states:

* * * * *

6. The issue which is important to the public interest and one deserving expeditious determination by this court is whether an employer may terminate an employee's personal services which are otherwise terminable at will, solely for reasons of religious discrimination.

7. Plaintiff-appellant urges swift action by this court or a justice thereof pursuant to Rule 302 for the following reasons:

* * * * *

(b) Courts are increasingly intervening to protect an individual's areas of private life that are clearly beyond an employer's intrusion. Examples are (1) refusing to commit perjury—*Petermann* v. *International Brotherhood of Teamsters*, 174 Cal. App. 2d 184, 344 P. 2d 25, (2) filing a claim for workman's compensation—*Frampton* v. *Central Indiana Gas*

Co. (1973, Ind.), 297 N. E. 2d 425, and (3) female rejecting sexual advances by employer—*Monge* v. *The Beebe Rubber Co.* (1974, N. H.), 316 App. 2d 549. The proposition relied upon by plaintiff-appellant is also recognized in *Geary* v. *United States Steel Corp.* (1974), 456 Pa. 171, 319 A. 2d 174. This proposition is grounded in a U. S. Supreme Court decision limiting an employer's power to terminate employment for recognized discrimination, *Phelps Dodge Corp.* v. *NLRB* (1941), 313 U. S. 177, 85 L. Ed. 1271, 61 S. Ct. 645, 133 ALR 1217.

(c) The Illinois courts have never squarely faced the issue. For this reason this court should give expeditious consideration to assure the public that constitutional liberty is in fact protected from arbitrary and capricious employers. . . . No constitution confers upon the defendants-appellees as an employer the right to demand that plaintiff give up his employment status simply because he wishes to remove his membership from their church to that of another. See *Williston On Contracts*, 3d Edition, Section 1763, p. 206.

* * * * *

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield 62706

April 30, 1976

In re: William Whitaker, appellant, vs. Robert Bruce Pierce, et al., appellees. No. 48443

Dear Mr. Moenning:

This office has today received and filed, under docket number 48443, your motion by appellant for direct appeal to this Court under Rule 302(b) concerning the above entitled cause, together with an order entered by Chief Justice Daniel P. Ward denying said motion.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS.

* * (Caption—76-556) * *

APPELLANT'S BRIEF

* * * * *

VI. Argument.

The sole issue on appeal is whether the trial court abused its discretion in denying plaintiff's motion for injunctive relief. If this court finds that in deciding the motion for injunctive relief the trial court failed to consider plaintiff's asserted constitutional right to religious liberty, the order appealed from should be reversed and the injunction granted *nunc pro tunc*. (Footnote omitted)

* * * * *

1. The Illinois Constitution of 1970 and the Constitution of the United States Each Protect Freedom of Contract and the Right to Religious Liberty.

* * * * *

. . . Freedom of Contract is conditioned by the state's overriding interest in protecting the public welfare. Public welfare is enforceable through legislative police power and by judicial cognizance of fundamental liberties such as the right to religious liberty. The record plainly demonstrates a cognitive indifference to this constitutional right. There is here, therefore, an abuse of discretion where the trial court refuses to entertain a well recognized constitutional proposition.

2. Civil courts have jurisdiction to guarantee civil and property rights denied by church bodies to ecclesiastical employees and involving solely church property.

* * * * *

These principles were followed by the Illinois Supreme Court in *Lowe* v. *First Presbyterian Church of Forest Park*, 56 Ill. 2d 404, 308 N. E. 2d 801 (1974).

* * * * *

It is not anathema to examine the facts, the law or issues so long as in so doing questions of ecclesiastical policy do not require resolution. Clearly, no such problem existed. The trial court observed this in noting that it was bound by the unanswered sworn complaint (p. 12) and again by stating that the only question was the issuance of a preliminary injunction (p. 13). Nevertheless when requested to direct that the church body hold a meeting in open and with full particulars, the court responded it had no power to order such a meeting (pp. 17-18). At page 19 it stated:

> "I say that I would have no right to have him reemployed. I have no right to call a meeting of the membership because there is a board that decides on all business matters of the church."

This conclusion is plainly contrary to the decisions of the United States Supreme Court and the Illinois Supreme Court.

* * * * *

3. The Right to Religious Liberty is a fundamental principle of public policy implied in every contract of employment.

The right to religious liberty is the natural right to worship according to the dictates of a person's conscience. It is as fundamental in our free society as is the right to life, liberty or the pursuit of happiness. Its primary status is given in organic law.

* * * * *

4. A contract contrary to public policy cannot be enforced.

The contention of defendants contained in their memorandum in opposition to plaintiff's motion is that plaintiff has an adequate remedy at law and that a contract for personal services cannot

specifically be performed. It is urged that defendants should not be restrained and that defendants be allowed to enforce contractual rights to terminate plaintiff.

The trial court erred in allowing this contention because a contract contrary to public policy is unenforceable.

* * * * *

5. It is an abuse of discretion to deny injunctive relief where such denial sanctions the violation of public policy protecting constitutional liberty.

In the case at bar plaintiff has demonstrated the trial court's acceptance of the facts. The abuse of discretion lies first in ignoring plaintiff's citation of the constitutional protection accorded religious freedom and particularly the fact that a private employer has no right from freedom of contract to discharge a person solely because he believes in a divine being differently than the employer.

* * * * *

In this case, can it be rightfully and justly concluded that plaintiff's religious freedom is subject to purchase by money damages. Clearly plaintiff has no adequate remedy at law to protect this cherished right of religious conscience.

IN THE APPELLATE COURT OF ILLINOIS

* * (Caption—76-556) * *

BRIEF AND ARGUMENT FOR DEFENDANTS-APPELLEES

* * * * *

The plaintiff's argument, made throughout the body of his brief, ignores the essential nature of the intended remedy of a temporary injunction and focuses, rather, on the merits of the case by asserting that the plaintiff's free exercise of religion un-

der the United States Constitution and the Illinois Constitution of 1970 should have been given precedence over the defendant's right to accept the plaintiff's resignation of his employment status.

As a result of plaintiff's emphasis on the merits of the instant lawsuit, the plaintiff attempts to extend this Court's review to matters not considered or decided by the trial court when it denied the temporary injunction; and, indeed, wishes to invite review of matters not properly cognizable by the trial court when it decided the issue of temporary injunctive relief.

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * (Caption—76-556) * *

APPELLANT'S BRIEF IN REPLY

* * * * *

1. It is an abuse of trial court discretion to enforce contractual rights plainly violative of public policy.

(a) Whitaker is not exceeding the proper scope of review.

Whitaker sought injunctive relief against Pierce, other church ministers, and lay officers of the Temple only after the defendants threatened to do something contrary to public policy and prejudicial to him. He presented to the court the undisputed fact that defendants were terminating his employment on the basis of a coerced "Resignation". This resignation was taken from Whitaker after he sought confirmation of his personal religious conviction in the Anglican faith. It is undisputed that membership in the methodist church is not a pre-emptive condition of Whitaker's employment as Organist—Choir Director. Further, it is not even a matter of pronounced ecclesiastical concern or church doctrine.[1]

* * * * *

---

1. Defendants' termination of Whitaker was followed by Employment of a Presbyterian.

(b) Contractual rights contrary to public policy and not enforceable.

* * * * *

What is at issue is whether such a right may be exercised solely because Whitaker exercised his freedom of religious conscience or conviction to be confirmed in a different Protestant sect.[1]

* * * * *

The court specifically sanctioned defendants' contractual right to terminate plaintiff's employment. Its error was compounded however, when it rejected plaintiff's plea to protect his constitutional right to freedom of religious conviction.

* * * * *

2. *It is an abuse of discretion for the trial court to refuse to consider well recognized constitutional propositions.*

In denying Whitaker injunctive relief, the trial court was not unmindful of Whitaker's right to freedom of religious conviction.

* * * * *

. . . [T]he trial court erred in support of defendants and against plaintiff when it refused to consider plaintiff's right to freedom of religious conviction. The error moreover looms large and monstrous. It is not plaintiff's private right to freedom of religious conviction, it is the public's right. Each person individually and collectively as a body politic possess the constitutional freedom at stake in this appeal.

* * * * *

With reference then to the threat of harm, the clear right to protection, the showing of probable success, and the need for status quo, as a standard of review, the refusal to consider well recognized constitutional propositions was an abuse of discretion.

---

1. It is of historical significance that this court also observe the common progenitor of Methodists (founded by John Wesley, of the Church of England) and Episcopalians is the Church of England.

IN THE APPELLATE COURT OF ILLINOIS
First District, Fifth Division

No. 76-556

WILLIAM WHITAKER, *Plaintiff-Appellant*, v. ROBERT BRUCE PIERCE *et al.*,

Defendants-Appellees.

* * * * *

Appeal from the Circuit Court of Cook County; the HON. SAMUEL B. EPSTEIN, *Judge, presiding.*

* * * * *

MR. JUSTICE SULLIVAN delivered the opinion of the court:

This is an interlocutory appeal from the denial of a motion for a preliminary injunction.[1] The only issue presented is whether the trial court abused its discretion in denying the injunction.

In his verified complaint, plaintiff sought injunctive relief and damages against the individual defendants, alleging that he had been employed as the organist-choir director at Chicago Temple—First United Methodist Church (Chicago Temple) for nearly 22 years without a written contract and that he was coerced into resigning because of his conversion to the Anglican faith. In an amendment to the complaint, Chicago Temple was impleaded as a party defendant, and plaintiff asked that the church (1) be enjoined from giving effect to his resignation; and (2) be ordered to rescind it and reconsider his employment.

In substance, plaintiff's complaint alleged that on November 15, 1975, he informed the pastor of Chicago Temple of his in-

1. Although the injunction requested was captioned "temporary injunction," this term is no longer appropriate. (See *Schwalm Electronics, Inc.* v. *Electrical Products Corp.* (1973), 14 Ill. App. 3d 348 n. 2, 302 N. E. 2d 394 n. 2.) The injunction requested here is more properly classified as a preliminary injunction, and we shall consider it to be such for purposes of this opinion.

tention to be confirmed as an Anglican. Thereafter, on December 3, 1975, he was called before the individual defendants—all members of the personnel committee of Chicago Temple—who, because of his conversion, demanded his resignation. As a result, he submitted a letter of resignation on December 4, 1975, and it was accepted on February 6, 1976. Thereafter, on March 15, 1976, plaintiff's attempt to rescind the resignation was rejected.

Before defendants had answered his complaint and amendment thereto, plaintiff moved for a preliminary injunction, asking that Chicago Temple and the individual defendants be enjoined from terminating his employment and from hiring a successor. In an affidavit supporting his motion, he alleged that he "was forced in violation of his civil and constitutional rights protecting the free exercise of religious conviction to resign as organist-choir director effective April 30, 1976"; and that he would suffer irreparable harm if the injunction were not granted, because (a) he could not secure comparable employment and (b) professional choir members would be disbanded, and they were necessary for him to perform the duties of organist-choir director. The preliminary injunction was denied, however, and this appeal followed.

OPINION

A party is not entitled to a preliminary injunction as a matter of right, and whether or not it should be granted is left to the sound discretion of the trial court. (*K. F. K. Corp.* v. *American Continental Homes, Inc.* (1975), 31 Ill. App. 3d 1017, 335 N. E. 2d 156.) Thus, the sole question for review here is whether there was an abuse of discretion in the denial of relief. *Grillo* v. *Sidney Wanzer & Sons, Inc.* (1975), 26 Ill. App. 3d 1007, 326 N. E. 2d 180.

• 1 Initially, we note our belief that the complaint was insufficient to justify granting the relief requested. Preliminary injunction is an extraordinary remedy and, where it has its

basis in the complaint, the facts necessary to justify the relief must be specified. (*Hall* v. *Orlikowski Construction Co.* (1974), 24 Ill. App. 3d 60, 321 N. E. 2d 23.) It is appropriate, in the absence of an answer, for a reviewing court to consider whether the complaint for preliminary injunction was sufficient. (*Alfred Engineering, Inc.* v. *Fair Employment Practices Com.* (1974), 19 Ill. App. 3d 592, 312 N. E. 2d 61; *McErlean* v. *Harvey Area Community Organization* (1972), 9 Ill. App. 3d 527, 292 N. E. 2d 479.) It will not issue on allegations which are mere conclusions, but facts must be set forth in detail and particularity which reveal the right to injunctive relief. *G. H. Sternberg & Co.* v. *Cellini* (1973), 16 Ill. App. 3d 1, 305 N. E. 2d 317.

Here, plaintiff moved for preliminary injunction before defendants answered his complaint. The record discloses that no testimony was taken and no offers of proof were made by plaintiff, and it appears that the court necessarily ruled on the sufficiency of the pleadings in denying relief.

An examination of the complaint discloses pertinent allegations, as follows: That defendant Hilborn "wrongfully demanded that in view of plaintiff's conversion, he resigned his position as organist-choir director * * *"; that "acting under the coercion and wrongful undue influence of defendant Hilborn" he submitted his resignation; that Hilburn "wrongfully refused to accept plaintiff's request to rescind his resignation"; and that certain of the defendants conspired "to compel the 'voluntary resignation' of plaintiff" because of his conversion. In the amendment to his complaint, plaintiff impleaded Chicago Temple and charged it with wrongfully rejecting a rescission of his resignation—knowing that it was improperly obtained.

We believe those allegations to be conclusory in nature (see *East Side Health Dist.* v. *Village of Caseyville* (1962), 35 Ill. App. 2d 443, 183 N. E. 2d 20), and that plaintiff's pleadings otherwise do not set forth facts in such detail as to warrant the issuance of the preliminary injunction (see *G. H. Sternberg &*

Co.; Illinois Migrant Council v. *Pilliod* (N. D. Ill. 1975), 398 F. Supp. 882).

• 2, 3 Further, it is clear that to support a request for preliminary injunction, the applicant must establish the likelihood of success on the merits. (*Wessel Co.* v. *Busa* (1975), 28 Ill. App. 3d 686, 329 N. E. 2d 414.) Here, although conceding that he submitted his resignation, plaintiff alleges that he was coerced or forced to resign, in violation of his constitutional rights. By definition, a resignation is the "formal renouncement or relinquishing of an office." (*Bauer* v. *Saper* (1971), 133 Ill. App. 2d 760, 762, 272 N. E. 2d 703.) Likewise, a resignation has been defined as a "voluntary surrender of a position by the one resigning, made freely and not under duress." (77 C. J. S. *Resignation* 311 (1952).) When one voluntarily submits a resignation, he thereby divests himself of any legal interest in his former employment. (*Cf. Bauer.*) It is conceivable that one could present sufficient facts to indicate that a resignation was involuntarily coerced and thus was legally equivalent to a discharge. (See *e.g., Moreno* v. *Cairns* (1942), 20 Cal. 2d 531, 127 P. 2d 914.) However, plaintiff does not do so here. He merely alleges that his resignation was demanded by Hilborn and that he was "acting under the coercion and wrongful influence" of Hilborn when he submitted it. In the light of the indicated voluntariness of his letter of resignation[2] which was before the trial court, and because the aforesaid allegations are conclusory, we think that a showing of ultimate probable success was not made. We point out, however, that in reaching that

2. The letter explains the resignation as an offer to relieve Chicago Temple from an embarrassing situation and, after first stating plaintiff's wish to continue his employment, the letter continues as follows:

> "Realizing, however, that my Confirmation in the Anglican Communion, wrongly understood, and inaccurately interpreted, might create embarrassment or difficulties for Dr. Pierce and/or my other esteemed colleagues, staff members, and the bretheren, it seems proper * * * I should now tender my resignation. Let it be said that I assume full and total responsibility for my actions."

conclusion we are not passing upon the merits of the case. See *Nationwide Advertising Service, Inc.* v. *Kolar* (1975), 28 Ill. App. 3d 671, 329 N. E. 2d 300.

• 4 Finally, we observe that the injunction sought here is mandatory in character because, in asking that defendants be restrained from terminating him and from hiring another in his place, plaintiff in effect asks the court to direct his reemployment and the discharge of his already employed successor. (See *Liberty National Bank* v. *Newberry* (1955), 6 Ill. App. 2d 252, 127 N. E. 2d 269.) A mandatory injunction should only be issued after a showing of great necessity (*Amber Automotive, Inc.* v. *Illinois Bell Telephone Co.* (1973), 15 Ill. App. 3d 769, 305 N. E. 2d 270), which must be clearly established and free from doubt (*Amber Automotive; Ambassador Foods Corp.* v. *Montgomery Ward & Co.* (1963), 43 Ill. App. 2d 100, 192 N. E. 2d 572.) Considering what has been stated in this opinion, we think that a showing of great necessity was not clearly established.

We are cognizant of other issues raised by plaintiff, including his contention that he had a right not to have his employment terminated because of his religious conversion. We stress, however, that our sole role in review is to determine whether the trial court abused its discretion in denying plaintiff's request for preliminary injunction and, for the reasons stated above, we find no such abuse and we affirm the judgment of the trial court.

Affirmed.

Opinion Filed
November 24, 1976

LORENZ, *P. J.* and BARRETT, *J.*, concur.

IN THE SUPREME COURT OF ILLINOIS

* * (Caption—49212) * *

PETITION FOR APPEAL AND IN THE ALTERNATIVE FOR LEAVE TO APPEAL

* * * * *

1. The decision of the Appellate Court conflicts with decisions of the U. S. Supreme Court, this Court, and another Appellate Court.

A. *Prayer for Relief as of Right.*

Plaintiff submits that the decision of the Appellate Court raises a question under the Constitution of the United States and of this State.

At issue is the principle of religious liberty to entertain any religious belief. Mr. Justice Miller, in *Watson* v. *Jones,* 13 WALL (80 U. S.) 679, 728, 20 L. Ed. 666 defined this liberty as the right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights. (sic)

* * * * *

In this case, plaintiff argues that the interest of the church in providing religious music as a part of its services was never injured by his religious conversion to the Anglican faith. If so, it must be contended by defendants that sometime before November 15, 1975, when plaintiff sensed the need to be confirmed it simultaneously sensed disruption of its services. That is not the case. Whitaker provided no discords in his playing the organ. Three major periods of spiritual thankfulness recognized in the protestant churches were celebrated with Whitaker at the organ—Thanksgiving, Christmas season, and Holy Week.

* * * * *

A. *Prayer for Relief as of Right.*

Plaintiff submits that the decision of the Appellate Court raises an important constitutional issue by its affirming the trial court's denial of injunctive relief. The issue is whether the Appellate Court's misinterpretation of the record denies plaintiff protection of his right to religious liberty and abridges public policy respecting enforcement of contractual rights. Plaintiff submits the decision of the Appellate Court denies his religious freedom.

* * * * *

. . . This ruling of the trial court was erroneous in light of the U. S. Constitution, the Illinois Constitution and Supreme Court decisions dating from *Watson* v. *Jones, supra.* Accordingly, but for this error, plaintiff was presumptively entitled to protection of religious freedom pending a full hearing on the merits. Nonetheless, the Appellate Court, without a review of this assigned error and ignoring the constitutional implications of its decision, did in the exercise of its jurisdiction examine the verified complaint and found it wanting *in specificity.*

* * * * *

B. *Prayer for Leave to Appeal.*

Plaintiff submits further that the Supreme Court should grant leave to appeal in order to consider whether the judgment of the Appellate Court compounds the error of the trial court in failing to consider constitutional rights of a party which are denied by action of the employer and which rely upon contractual rights violation of public policy. The facts of this case raise significant issues affecting not just plaintiff but every American citizen. As Mr. Justice Jackson stated in *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1629 (1943) at page 642: "Unless the freedom to differ spiritually and intellectually applies to matters of substance, that freedom would be a mere shadow

of freedom. . . . The test of substance is the right to differ as to things that touch the heart of the existing order." Here, plaintiff seeks protection of this freedom in the context of a preliminary injunction.

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield 62706

March 31, 1977

* * * * *

No. 49212—William Whitaker, petitioner, vs. Robert Bruce Pierce, et al., respondents. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

* * * * *

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield 62706

May 5, 1977

* * * * *

In re: William Whitaker, petitioner, vs. Robert Bruce Pierce, et al., respondents. No. 49212

Dear Mr. Moenning:

This office has today received and filed your notice, motion by appellant to stay the mandate of the Appellate Court or alternative relief in order to seek review in the United States Supreme Court, and order entered by Justice James A. Dooley granting said motion and ordering that the mandate of the Appellate Court be stayed to and including June 29, 1977, concerning the above entitled cause.

* * * * *

FILED
JUL 28 1977

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1872

WILLIAM WHITAKER,

Petitioner,

vs.

ROBERT BRUCE PIERCE, JOHN HILBORN, WILLIAM G. STRATTON, BIRGER DAHL, ROYAL SPEIDEL, and W. EDGAR OUTLAW, JR.,

Respondents.

IN CHANCERY COMPLAINT FOR INJUNCTION RESCISSION AND REDRESS OF CIVIL RIGHTS.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

ELROY C. SANDQUIST, JR.,
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Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1872

WILLIAM WHITAKER,

Petitioner,

vs.

ROBERT BRUCE PIERCE, JOHN HILBORN, WILLIAM G. STRATTON, BIRGER DAHL, ROYAL SPEIDEL, and W. EDGAR OUTLAW, JR.,

Respondents.

IN CHANCERY COMPLAINT FOR INJUNCTION RESCISSION AND REDRESS OF CIVIL RIGHTS.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

To: Honorable Warren E. Burger and Justices of the Supreme Court of the United States:

OPINION BELOW AND JURISDICTION.

The opinion below and jurisdiction are set forth in the Petition. The respondents deny, however, for reasons enumerated below, the applicability of the constitutional provisions which the petitioner seeks to invoke.

QUESTION PRESENTED FOR REVIEW.

1. Did the Illinois Appellate Court decision turn on a substantial Federal question, necessary for Supreme Court jurisdiction of this matter pursuant to Title 28 U. S. C. A. § 1257 et seq.

STATEMENT OF THE CASE.

The relevant facts and proceedings below are fully and fairly summarized in the opinion of the Illinois Court of Appeals, appended to the Petition.

REASON WHY THE WRIT SHOULD BE DENIED.

1. This Court lacks jurisdiction over this matter under Title 28 U. S. C. A. § 1257.

Title 28 U. S. C. A. § 1257 provides in pertinent part:

> "State Courts; Appeals; Certiorari:
>
> Final judgment or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows . . . (3) by writ of certiorari, where the validity of the state statute is drawn in question on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, priviledge or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Pursuant to Title 28 U. S. C. A. § 1257, this court has consistently held that it will not review a decision of a state court unless the record below demonstrates that the decision turned on a federal question, rather than on an independent, non-federal question. *Herb* v. *Pitcrairn*, 324 U. S. 117 (1945).

As stated by Mr. Justice Jackson in the *Herb* decision:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state

courts that rest on adequate and independent state grounds. Murdock v. Memphis, 20 Wall. (U.S.) 590, 636, 22 Led. 429, 444; Berea College v. Kentucky, 211 U.S. 45, 53, 53 Led. 81, 85, 29 S. CT. 33; Enterprise Irrigation District v. Farmers Mutual Canal Company, 243 U.S. 157, 164, 61 Led. 644, 648, 37 S. CT. 318; Fox Film Corporation v. Muller, 296 U.S. 207, 80 Led. 158 56 S. CT. 183. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and Federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. . . ." (Pages 125 and 126 at 324 U. S.)

In the instant case, the decision of the Illinois Appellate Court, which upheld the trial court's denial of the petitioner's Motion for a Preliminary Injunction did not turn upon a federal question; but rather turned upon the issue of whether as a matter of law, the trial court had abused its discretion in denying the petitioner's Motion for a Preliminary Injunction which, under Illinois law, is determined by whether the party seeking the preliminary injunction establishes a likelihood of success on the merits.

Both the Illinois Appellate Court and the Illinois Supreme Court were confronted with the petitioner's assertions that the conduct of the respondents had violated his freedom of religion as guaranteed by the First and Fourteenth Amendments to the Constitution, and on that basis the trial court had erred in denying the petitioner's Motion for a Preliminary Injunction. However, the decision of the Illinois Appellate Court demonstrates that the Illinois Appellate Court expressly rejected the petitioner's arguments that it should review the matter on a constitutional basis and found that the sole question for review was the aforesaid non-federal question. In this regard the Court stated:

"We are cognizant of other issues raised by plaintiff, including his contention that he had a right not to have his

> employment terminated because of his religious conversion. We stress, however, that our sole role in review is to determine whether the trial court abused its discretion in denying plaintiff's request for preliminary injunction and, for the reasons stated above, we find no such abuse and we affirm the judgment of trial court." (Page A22 of Petition.)

Petitioner does not demonstrate that the Illinois Court's decisions turned on a federal question but merely states that the courts abdicated their duty in not protecting the petitioner's religious freedom which is inadequate to establish the jurisdiction of this Court.

In Summary this Court clearly lacks jurisdiction of this matter because the decision appealed from clearly turned upon whether the petitioner, at the trial court level sustained his burden in demonstrating a likelihood of success on the merits, and did not turn upon the resolution of any federal question.

CONCLUSION.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ELROY C. SANDQUIST, JR.,
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Suite 7300,
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(312) 861-1400,
Attorney for Respondents.